



## WILL COUNTY BOARD

WILL COUNTY OFFICE BUILDING • 302 NORTH CHICAGO STREET • JOLIET, ILLINOIS 60432

October 29, 1997

Office of the Secretary  
Federal Communications Commission  
1919 M Street N.W.  
Washington, D.C. 20554

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OCT 30 1997

LEGAL ROOM

In the Matter of )  
)  
Preemption of State and Local Zoning and )  
Land Use Restrictions on the Siting, )  
Placement, and Construction of Broadcast )  
Station Transmission Facilities )

MM Docket No. 97-182

On behalf of the Legislative Committee of the County of Will, State of Illinois, I am writing to voice our concern over the notice of the proposed rule making for "Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities."

The Will County Board Legislative Committee strongly supports the concerns and comments raised by the Will County Land Use Department, as attached. The Committee is particularly concerned about the preemption of local authority, the arbitrary time frame invoked, and the process of appeals from decisions made under this ruling.

The Committee is further bringing forth a Resolution to the full Will County Board at its November 20, 1997, meeting supporting this position.

We respectfully request your consideration of Will County's concerns on this issue, as set forth in the attached letter from Will County's Planning Director.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Karen Callanan".

Karen Callanan, Chairman  
Will County Board Legislative Committee

KC:lm

cc: Legislative Committee Members

Handwritten initials "OC" and a date stamp "OCT 30 1997".



# WILL COUNTY LAND USE DEPARTMENT

501 ELLA AVENUE • JOLIET, ILLINOIS 60433

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Land Use Restrictions on the Siting, )  
Placement, and Construction of Broadcast )  
Station Transmission Facilities )

MM Docket No. 97-182

On behalf of the Land Use Department of the County of Will in the State of Illinois, I am writing to voice our concern over the notice of proposed rule making for "Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities." In particular, we have concerns regarding preemption of local authority, the arbitrary time frame invoked, and the process of appeals from decisions made under this ruling.

## Preemption of Local Zoning and Land Use Restrictions

The proposal references the "countervailing importance of accelerated construction of DTV transmission facilities" to "state and local roles in zoning and land use matters and their longstanding interest in the protection and welfare of their citizenry" (III, 11). We find this juxtaposition of values inherently questionable in that it places availability of digital television services above the "protection and welfare" of the citizens whom these transmission facilities are ostensibly trying to serve.

We recognize the mutual interests of the County and the petitioners in providing our residents with quality service. As the local authority, however, it is our responsibility to balance these interests within an overall framework of the public's welfare. Not only does the proposed rule put severe limitations on restrictions regarding health and safety, but preempts considerations of aesthetics, property values, and environmental factors — issues we do not see as secondary to the implementation of new broadcast technologies.

Already the County is attempting to deal with the impact of new State legislation regulating the erection of telecommunications facilities which we feel is quite lenient. Yet the Notice states that the proposed rule "would cover siting of all broadcast transmission facilities construction. That is, petitioners have not limited their preemption rule to DTV-related construction, including the involuntary relocation of FM antennas now collocated on television towers" (III, 16). The Notice rightly concedes that "it is incumbent upon the Commission not to 'unduly interfere with the legitimate affairs of local governments when they do not frustrate federal objectives.' These include not only certain health and safety regulations...but also the right of localities to maintain their aesthetic qualities" (III, 15). It is our opinion

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that there is no inherent supremacy of "federal objectives" in this instance as over and above the protection of local citizens afforded local government.

#### **Time Frames**

The time frames given for acting on a request for authorization to place, construct, or modify broadcast transmission facilities are unreasonable. Will County is experiencing an exceptional rate of growth, with total population projected to increase between 102-126% by the year 2020. Though, as language in the Notice suggests, this growth might be used as an argument for rapid deployment of DTV, we would argue that the rate of growth actually inhibits our ability to respond in the time frames suggested by the Siting Procedures. All development requests are affected, such that there should be no more reason to "fast-track" a digital service facility than there would be for other perhaps more significant land uses. Rather than the 21/30/45 day time frame suggested by the petitioners in Appendix B(a), a 90-day time frame would be consistent with internal procedural requirements already in place in Will County, as suggested in Section IV, 23.

#### **Appeals**

We are also concerned over the purview of appeals resting at the FCC. Appendix B(d) establishes an "alternate dispute resolution process which shall be administered by the Commission." This appears to require the County to defend an action of denial in Washington rather in local State or Federal courts, which would also serve to undermine the ability of the County to effectively protect its citizens where it believed an action of denial to be justified.

In summary, the right of governmental agencies to regulate the use of land has been well established since 1926 and *Ambler Realty v. the Village of Euclid*. The proposed rule making establishes a dangerous preempting of that authority that we feel unfairly restricts the ability of the County to carry out its mission.

Sincerely,



Tyson Warner AICP  
Planning Director

cc: Charles Adelman, County Executive  
James Heffron, Director of Land Use  
Karen Callahan, County Board District #5/Legislative Committee Chair

Enclosures: Nine (9) copies for formal distribution.